THE HON'BLE SMT JUSTICE T.MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.15196 OF 2007 AND C.C.NO.609 OF 2007

O R D E R (Per the Hon'ble Smt. Justice T.Meena Kumari)

Heard both the counsel.

2. Aggrieved by the order dated 06.06.2007 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad in O.A.No.748 of 2006, the applicant filed the present writ petition.

3. Complaining that the interim orders of this court dated 17.7.2007 passed in WPMP.NO.19148/2007 in W.P.No.15196/2006 were violated by effecting promotions to the post of Chief Typist pursuant to the second notification dated 14.12.2006, the petitioner filed the contempt case.

4. From the material available on record, it could be seen that pursuant to the notification No.WPV/PB/186/Ch. Typist, dated 10.10.2006, issued by the 2nd respondent – Senior Divisional Personnel Officer, E.Co., Railway, Dondapathy, Visakhapatnam, the petitioner who was working as Head Typist in the Office of the Senior Divisional Commercial Manager, East Coast Railway, Visakhapatnam applied for the said post and he attended for the typewriting test conducted on 30.10.2006 and in the results announced vide office order No.ESTT/Pers/52/2006 dated 22.11.2006, the petitioner along with others was selected and it was intimated that the interview will be notified separately and shortly. After the announcement of results, the unofficial respondents made a representation to re-conduct the practical examination, *inter alia* alleging that defective machines were supplied to them and on coming to know of the same, the petitioner

along with others also made a representation to conduct interviews immediately. As the interviews were not declared, the petitioner filed O.A.No.748/2006 on 12.12.2006 for a direction to proceed with the selection. The O.A. came up for hearing on 15.12.2006 and in the meanwhile on 14.12.2006 the 1st respondent – The Divisional Railway Manager, E.Co. Railway, Dondaparthy, Visakhapatnam issued orders on 14.12.2006 canceling the practical test conducted on 30.10.2006 and on the same day issued, 2nd notification NoWPV/PB/186/Ch. Typists and it was notified that that the practical test would be conducted on 16.12.2006 for 12 in service candidates. As the test conducted on 30.10.2006 was cancelled on 14.12.2006 and as the 2nd notification was issued, the Tribunal directed the petitioner to appear for the practical test to be conducted on 16.12.2006 and the petitioner sought amendment of the prayer in the O.A. for cancellation of the second notification. The Tribunal noticing that all the candidates called for practical test were not tested at the same time and that three batches were conducted and as no option was given to the candidates to bring their own typewrites and further though some of the candidates made representation on 23.10.2006 asking permission to use computer and as the said representation was not considered; held that the respondents are justified in canceling the exam conducted on 30.10.2006 and issuing second notification and accordingly dismissed the O.A. Hence, the present writ petition.

5. The learned counsel appearing for the petitioner contended that the official respondents have no power to cancel the selection list based on the representation of the unsuccessful candidates and further she submitted that in the cancellation order dated 14.12.2006, no reasons were assigned for cancellation and the reasons cannot be stated in the counter and she further submitted that there are no irregularities as found by the Tribunal and as stated above, those reasons are also not mentioned in the cancellation order dated

14.12.2006 and, therefore, the Tribunal is not justified in dismissing the O.A. and the respondents may be directed to proceed with the selection process based on the practical test conducted on 30.10.2006 which was conducted pursuant to the initial notification.

6. On the other hand, the learned Standing Counsel for Railways, submitted that based on the representation of the unsuccessful candidates that they were not given proper typewriters and that the test was conducted in three batches, the respondents cancelled the initial selection and, therefore, he submitted that the impugned order does not warrant any interference and sought for dismissal of the writ petition.

7. In view of the above rival contention the point that arises for our consideration is whether the official respondents are justified in issuing the second notification canceling the initial notification and whether the Tribunal is justified in dismissing the O.A. filed by the petitioner by confirming the second notification?

8. There is no dispute that the petitioner along with others who is qualified for the post of Chief Typist appeared for the practical test of typewriting pursuant to the first notification and got selected and was shown at serial no.4. The case of the official respondents is that based on the representation of the unsuccessful candidates that they were not provided with good typewriters and that the test was conducted in three batches and that their representation was also not considered, the first selection has been cancelled and the second notification was issued.

9. It is to be seen that there cannot be any dispute that the power to make recruitment may also include the power to cancel and similarly power to issue notification may also include the power to withdraw the same, subject to the reasonable nexus with the object of

subsequent recruitment and also subject to irregularities or any *mala fidies* on the part of the selected candidates. In the present case, the 2nd respondent issued notification dated 14.12.2006 canceling the practical test conducted on 30.10.2006. The relevant portion of the said order reads as under:

> "The practical test conducted to Hd. Typists in scale Rs.5000-8000(RSRP) on 30.10.2006 in connection with the selection of Chief Typist in scale Rs.5500-9000(RSRP) to form oa panel of 4 Fr + SC and the results published vide O.A.No.Estt.Pers/52/2006, dated 22.22.2006 are hereby cancelled."

10. From a perusal of the above order it is clear no irregularities in conducting of the test or any *mala fidies* on the part of the selected candidates, is mentioned and there are no reasons for cancellation of the earlier notification and the results of the practical test conducted in pursuance of the said notification. The Tribunal in the impugned order recorded reasons for cancellation of the initial selection that the practical test was conducted in three batches and that no option was given to the candidates to bring their own typewrites though they gave representation on 23.10.2006 seeking permission to use computer and that the typewriters are not in good condition, the controlling authority cancelled the initial selection and issued fresh notification. As already noticed, the above reasons, which the Tribunal has taken into consideration based on the counter, are not reflected in the cancellation order dated 14.12.2006 and it is well settled that the reasons which are not in the impugned order cannot be supplemented by way of counter. Further no specific provision under the Statute which envisage such cancellation, is brought to the notice of this court. It is also to be noticed that as per the case of the unofficial respondents, they made representation on 23.10.2006, but they kept quiet till the test is conducted and also participated in the test and only

after the declaration of results, they made representation alleging certain irregularities and based on the same, the selection list was cancelled by order dated 14.12.2006 without any reasons and further the second notification was issued on the very same day. No material is also placed before this court with regard to the alleged irregularities. Therefore, in the absence of any tangible material and the reasons to show that the practical test has been conducted in an irregular manner or that there are any *mala fidies* on the part of the selected candidates, we are of the view that the official respondents are not justified in canceling the initial selection merely based on the representation of the unsuccessful candidates and the Tribunal has not properly appreciated the above aspects and hence the impugned order of the Tribunal is liable to be set aside.

11. In view of the above facts and circumstances and the foregoing reasons, the issue framed is answered in the negative and in favour of the petitioner and the cancellation order dated 14.12.2006 in office order no.ESTT/Pers./56/2006 is set aside and consequently the second notification 14.12.2006 NoWPV/PE/186/Ch. and the selections and promotions effected thereto are also set aside. The official respondents shall proceed with the selection process based on the first notification dated 18.10.2006 and the practical test conducted on 30.10.2006 and the results announced on 22.11.2006 and further shall conduct viva voce within a period of three weeks from the date of receipt of a copy of this order. The impugned order of the Tribunal is accordingly set aside.

12. With regard to contempt case it is to be seen that this court on 17.7.2007 by order dated 17.7.2007 in WPMP.No.19148/2007 in W.P.No.15196/2007 passed orders restraining the respondents from effecting the promotions to the post of Chief Typist in pursuance of the selections made vide notification of the 1st respondent dated 14.12.2006 pending disposal of the writ petition. In the contempt case

it is stated that the official respondents effected promotions pursuant to the second notification dated 14.12.2006 on 17.7.2007 in violation of the orders of this court. In the counter filed by the respondents it is stated that after the disposal of the O.A. and before the receipt of the interim orders the promotions were effected. In view of the statement in the counter, we do not find any deliberate flouting of the interim orders of this court. Hence, in view of the above orders in the writ petition and as there is no deliberate violation of the interim orders of this court, the contempt case liable to be closed.

12. In the result the writ petition is allowed with the above direction and the contempt case is closed. No costs.

T.MEENA KUMARI,J

G.CHANDRAIAH,J

AVS
DATE:05.11.2007

Note:

Issue C.C. in one week.
B/O